



Kemp, Vicky (2014) PACE, performance targets and legal protections. *Criminal Law Review*, 2014 (4). pp. 278-297. ISSN 0011-135X

**Access from the University of Nottingham repository:**

<http://eprints.nottingham.ac.uk/40364/1/Kemp%20PACE%20performance%20targets%20and%20legal%20protections.pdf>

**Copyright and reuse:**

The Nottingham ePrints service makes this work by researchers of the University of Nottingham available open access under the following conditions.

This article is made available under the University of Nottingham End User licence and may be reused according to the conditions of the licence. For more details see:  
[http://eprints.nottingham.ac.uk/end\\_user\\_agreement.pdf](http://eprints.nottingham.ac.uk/end_user_agreement.pdf)

**A note on versions:**

The version presented here may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the repository url above for details on accessing the published version and note that access may require a subscription.

For more information, please contact [eprints@nottingham.ac.uk](mailto:eprints@nottingham.ac.uk)

**For educational use only**

# **Criminal Law Review - 2014**

## **PACE, performance targets and legal protections**

Dr Vicky Kemp\*

**Subject:** Police

**Keywords:** Cautions; Custody records; Performance indicators; Police powers and duties

**Legislation:** Police and Criminal Evidence Act 1984 (c.60)

### **Crim. L.R. 278 Summary**

Managerial influences in the criminal justice system have become increasingly dominant over recent years. There has also been a drift towards summary justice, with the police formally dealing with a significant proportion of cases out-of-court. In this study of four large police stations, performance targets were seen to influence policing strategies and decision-making. Even when performance targets have changed or been eliminated, they can have an enduring effect on relationships and decisions made in police custody. For example, when under pressure to prioritise police performance targets, this encouraged senior officers to intervene in custody decisions, which legislation requires to be made by impartial and independent custody officers. An unintended consequence of performance management, therefore, is the potential to undermine the legal protections of those held in police custody.

### **Introduction**

The Police and Criminal Evidence (PACE) Act 1984 is intended to provide legal protections for those arrested and detained by the police. However, the legislation has been periodically revised and there have been changes within the organisations and groups which operate within the PACE framework.<sup>1</sup> In addition, while PACE is intended to regulate police behaviour, managerial influences have become increasingly dominant, including performance management and the setting of performance targets. There has also been a drift towards summary justice, with the police formally dealing with a significant proportion of offences out-of-court. As Jackson (2008) observed, PACE now operates in a custodial environment which is no longer merely the site of the investigation, but also of accusation and disposition.<sup>2</sup>

In this study of four large police stations, conducted in late 2010, the intention was to examine the take-up of legal advice and to identify potential barriers to legal advice.<sup>3</sup> It was not anticipated at that time that the "offences brought to justice" (OBTJ) performance target would be relevant, particularly as it had been withdrawn some months earlier. However, it soon became apparent from comments made by custody sergeants that the police continued to be under pressure from this target. It was assumed that there had been a delayed effect following withdrawal of the target, influencing changes on the ground. In a subsequent study of one of the police stations involved, however, it was noted how a local OBTJ target was

continuing to influence police practices. This included the police targeting minor offences and other "easy hits" as a way of improving the detection rate. In addition, with priority being given by senior officers to achieving performance targets, they were also seen to influence custody officers' decisions.

This article draws mainly on research interviews with custody sergeants based in the four large police stations. It examines some of the factors associated with performance management which were found to undermine suspects' legal rights when brought into police custody. By way of background, it is helpful to first of all consider some of the relevant issues arising out of performance management.

### ***Police performance and the OBTJ target — 2002–2010***

The "offences brought to justice" target had been introduced by Government in 2002 following criticisms of the police for having a low detection rate for recorded crimes.<sup>4</sup> With a police target to increase the number of detections, this was seen to be an effective way of bringing more offences to justice.<sup>5</sup> Within a performance culture, by 2008 the set targets were not only met but exceeded.<sup>6</sup> By this time, however, concerns were raised over the target encouraging the police to focus their attention on minor offences and other "easy hits".<sup>7</sup>

The OBTJ target was seen to have a "net-widening" effect as the police were encouraged to respond formally to minor and trivial offences which would previously have been dealt with informally, or had no action taken in response to them.<sup>8</sup> This led to a sharp increase in the number of out-of-court disposals, rising by 135 per cent from 2003 to 2008, while the number of convictions at court remained stable.<sup>9</sup> The effect of the OBTJ target was to bring about a fundamental shift in how justice was delivered. Instead of around a quarter (23 per cent) of all offenders being dealt with out-of-court in 2003, this increased to 40 per cent in 2008.<sup>10</sup>

In response to such concerns, the government revised the OBTJ target in 2007 in order to encourage the police to concentrate their efforts on relatively serious violent, sexual and acquisitive offences. While the revised target had the desired effect of reducing the number of out-of-court disposals, the police continued to concentrate their efforts disproportionately on minor offences. In June 2010, the incoming coalition government withdrew the OBTJ target.

### ***Police performance: reducing crime***

At the same time as abolishing the OBTJ and other police performance targets in 2010, the Government imposed a single "top down" target to reduce crime. The Home Secretary announced this change at a meeting of senior police officers. She is reported as saying that targets, "hinder the fight against crime" and that instead the police role was simply to "cut crime".<sup>11</sup> At around the same time that the targets were changed the government announced substantial cuts to police budgets and so, not surprisingly, the number of individuals proceeded against formally, both in and out-of-court, was to decline.<sup>12</sup> Nevertheless, as senior officers were only too well aware, the police would continue to be judged on the "clear up" rate of recorded crime, i.e. the number of detected offences. Accordingly, it seems from this study that while the national OBTJ target had been withdrawn, and with a single overall target to reduce crime, a number of police force areas went on to adopt a local target to increase the number of detected offences.

## ***Performance targets and "gaming" techniques***

Research into public management and the use of performance measurement in other public sectors has shown that "what's measured is what matters", which can encourage "gaming" practices in order to meet the set targets.<sup>13</sup> In the health sector, for example, there is evidence of "gaming" and the creation of perverse incentives and behaviours which were stimulated by target-based performance management. This could be seen through skewed activity, such as data manipulation and deliberately delaying medical treatment.<sup>14</sup>

The police service has been criticised for "gaming" the recorded crime statistics in order to be successful within a performance regime.<sup>15</sup> With the police having responsibility for managing the recorded crime data, they also have discretion to "create" or "hide" offences, depending on the desired outcome.<sup>16</sup> When under pressure from the OBTJ target, for example, this was seen to encourage the police to "create" offences, by taking formal action in cases which would previously have received an informal intervention, or had no action taken at all. A rise in the number of detected offences could then be used to show that the police were proactive in tackling crime. On the other hand, when under pressure to reduce crime, the police can "hide" offences by simply not recording details of crimes coming to their attention.

In order to help standardise crime recording practices across police force areas, the National Crime Recording Standard (NCRS) was introduced in 2002. This standard was seen to have a positive effect, as it was prescriptive about the manner of dealing with incidents reported to the police.<sup>17</sup> With the police under pressure from the OBTJ targets, however, this was noted to have encouraged the resurrection of "questionable" crime recording practices.<sup>18</sup>

## ***Performance targets and a "command and control" style of management***

Within a performance framework, a "command and control" style of management is required in order to ensure a commitment from the "top-down" to achieving the set targets.<sup>19</sup> Such an approach is well-suited to the police as a hierarchical and disciplined organisation. Through performance related pay there are also financial incentives for managers to perform well under the set targets. Contrariwise, those managers considered to be responsible for failing to meet the set targets can be punished, which can include dismissal.<sup>20</sup> If a police force was found to be "failing" because the targets were not met, there was also the threat of intervention from government. There was one police force area where the Home Secretary warned the Chief Constable and his senior officers that their jobs were at risk unless there was improvement in performance.<sup>21</sup>

With senior officers experiencing such pressure under a performance regime, it is not surprising that this then led to some police force areas prioritising the set targets. Within police custody, however, there are PACE protections, which require certain decisions to be made by custody officers who are impartial and independent of the police investigation.<sup>22</sup> It is important to examine further, therefore, to what extent this "top-down" approach to management can influence changing relationships between senior officers and "independent" custody officers.

The findings in this article are drawn from the perspective of custody sergeants. The first issue explored is the potential "net-widening" effect of the OBTJ target, which custody sergeants said encouraged the police to focus their attention on minor offences and other "easy hits". This is followed by an examination of comments made about police cautioning

practices in the context of the OBTJ target. The third issue raised involves the potential for "gaming" by the police, through manipulation of the criminal statistics in order to achieve the set targets. Finally, it is the "command and control" style of management, required under a performance framework, which is explored in the context of decisions made in police custody. In particular, with senior managers responsible for achieving the set targets, there were concerns raised by custody sergeants about senior officers seeking to influence what were legally considered to be their custody decisions, which could undermine the legal rights of those detained.

## **Methods**

This study involved an examination of the main police station in four different police force areas in late 2010. It included observation of suspects being booked into police custody, interviews with fifty custody sergeants and analysis of police custody records.<sup>23</sup> It was arising out of this study that one of the four stations—Police Station B—was identified with a relatively low take-up of legal advice. The finding prompted the police and the defence in this station to support new arrangements intended to help improve access to legal advice; referred to as the "Bridewell study".<sup>24</sup>

In an ideal world, the findings arising out of this study of four stations would have been published before the commencement of the new initiative, but this was not possible.<sup>25</sup> Accordingly, and by way of an update, reference is sometimes made to findings arising out of the Bridewell study.<sup>26</sup> The methods in that study included observations of police custody and the police investigation, as well as interviews with suspects, custody sergeants, police investigators and defence practitioners.<sup>27</sup>

## **"Offences brought to justice": widening the net of social control**

The metaphor of "net-widening" is useful when examining the OBTJ target, as this target encouraged the police to take formal action in relation to minor offences and other "easy hits". Despite the target having been withdrawn some months prior to these research interviews, custody sergeants in all four police stations complained about policing strategies which were continuing to pick on children and young people in order to help increase the number of detections. In relation to children, for example, one custody sergeant said, "You get a fight in a school playground — a nothing job. In the old days we would have taken them home and interviewed them in front of their parents but now they are brought into custody" (B:PI).<sup>28</sup> In a similar vein, another respondent was critical of officers for bringing children into custody for "a kid-on-kid fight in a school playground" (A:JL). There were also concerns raised over the police responding formally to complaints made inappropriately by staff in children's homes. As one respondent put it:

"We are getting kids who are only 12 or 13 for minor assaults and criminal damage. They might have thrown a cup or something like that. The home should be geared up to deal with incidents like that and not involve the police"(C:PI).

There were also examples given by custody sergeants of where the police would pick on students as "easy hits" for behaviour which would otherwise be ignored, or dealt with informally. The following three comments help to highlight some of the stratagems adopted:

"We have officers based in a nightclub so they can catch those under-aged who are trying to get in. They picked up a 17-year-old for having a fake ID [identity card] and bailed him back to the police station. What for? I don't get it. The police want a detection so they will put resources into that sort of thing. It's wrong."(A:ES)

"It's not fair when you get students away from home for the first time. They go out and have a bit to drink. They might be loud and swear at an officer. In the past they would have got a warning and been sent home but now they get arrested because it helps with the figures. It's wrong, as you can have a law student getting a caution and it can affect their lives."(B:PI)

"Every night the Governor is sending a pair of officers up to the university in order to turn over students for using cannabis. They get a caution and a criminal record and they will probably find that this then comes up on a CRB [criminal records bureau] check when they are looking for a job."(D:SD)

Custody sergeants were critical of other police officers for failing to use their discretion when responding to minor incidents. After making the above comment, for instance, the respondent continued saying:

"We used to have discretion but it's gone now. If I found a small amount of drugs on someone it didn't mean they'd be arrested. It's nobody's business the amount of cannabis I've chucked down the drains"(D:SD).<sup>29</sup>

The net-widening effect of the OBTJ target was commented on by a number of custody sergeants. One respondent said, for example:

"The problem is the pressure they [the police] are under. I'm not joking — it's leading to the criminalisation of a section of society who should never have a criminal record"(A:ES).

Another said, "We are criminalising a lot of youngsters who should be sorted out another way" (C:BQ). There were some custody sergeants, particularly the more experienced officers, who said that they would seek to challenge the police when bringing people inappropriately into custody. As one custody sergeant put it:

"There are a lot now where we won't authorise a detention because we think it's a load of rubbish. Like schoolboy fall-outs, minor assaults and shop thefts. They are under pressure to get detections and picking on school kids is easy"(B:QT).

In practice, however, custody sergeants were rarely seen to challenge the police when bringing suspects into custody, even though it was their responsibility under PACE to authorise the detention of suspects.

When it was pointed out to custody sergeants during the research interviews that the OBTJ target had been withdrawn most were surprised that this was the case. Indeed, having referred to such pressure as being a "major problem", when told that there was no longer a national target, one custody sergeant replied: "If it's gone you wouldn't know it here because nothing has changed" (A:ES). It seems that "nothing had changed" in three out of the four police force areas because a target to increase the number of detections had been included in local policing plans for 2010/2011. In Police Station D, on the other hand, a couple of custody sergeants commented on a recent change in policing priorities. As one custody sergeant

explained: "Performance here is no longer all about arrests and detections. It's more about victim satisfaction" (D.SE).<sup>30</sup>

With concerns raised over the way in which the OBTJ target encouraged the police to concentrate their efforts on minor offences and other "easy hits", it is interesting that a number of police force areas have adopted OBTJ-type targets as a local performance measurement. Indeed, this was despite strong criticism coming from senior police officers nationally, who felt the OBTJ target was undermining police discretion when responding to minor incidents.<sup>31</sup> This was also an issue raised by Sir Ronnie Flanagan in his *Review of Policing*. In particular, he stated that:

"My research has consistently highlighted examples where the service could improve its professional judgement and adopt a more proportionate response in responding to lower level crimes. The consequence of poor professional judgement, combined with existing performance management arrangements, is that officers are encouraged to criminalise people for behaviour which may have caused offence but the underlying behaviour would be better dealt with in a different way."<sup>32</sup>

While a substantial proportion of out-of-court disposals were penalties imposed by the police on the streets, increasingly the police were encouraged to bring more minor and trivial offences into custody. There were three main reasons for this change. First, there were incentives within a performance culture for the police to make arrests as well as to increase the number of detections.<sup>33</sup> Secondly, the police were encouraged to convey a suspect into custody so that their identity could be checked through the routine taking of fingerprints and DNA samples.<sup>34</sup> Thirdly, there had been a change in police powers of arrest, which meant that, "the police will be able to arrest anyone without warrant for anything, whether trivial or serious".<sup>35</sup>

The intention of Government in withdrawing the OBTJ target and replacing it with another was to encourage the police to concentrate their efforts on reducing crime. By the first phase of the Bridewell study (February–May 2011), however, there was seen to be little change as the police continued to arrest and detain suspects for minor and trivial offences. Indeed, a key finding at that time was that custody continued to be used inappropriately for low-level offences, which included children and the elderly being detained for a minor first offence.<sup>36</sup> It seems that by the time of the second phase (July–October 2012) there had been a change in police practices because the number of suspects detained had reduced significantly.<sup>37</sup>

While in mid-2012 there had been a reduction in the number of suspects brought into custody in the Bridewell, the police would continue to detain suspects for minor offences. When interviewing police investigators in October 2012, for example, they acknowledged the trivial nature of some of the cases referred to them by front-line officers.<sup>38</sup> Despite the minor nature of some of the offences involved, not one of the investigators said they would refuse to accept a case. On the contrary, one police investigator said: "Drivel is our thing and nothing can be too minor. If it is really minor then we can always use RJ [restorative justice]." Another police investigator said:

"There's no end of stuff which I think is far too trivial to be dealt with ... I should say about a third to a quarter of cases we shouldn't even be bothering with. We wouldn't have dealt with them ten years ago."<sup>39</sup>

In Choongh's ethnographic study of police custody in the late 1990s, he noted that a significant minority of people were brought into custody for minor offences, particularly offences of disorder, where the police had no intention of invoking the criminal process.<sup>40</sup> It seems that a change brought about by the OBTJ target has been to put the police under pressure to invoke the criminal process in relation to minor offences in order to increase the number of detections.<sup>41</sup> While the OBTJ target had been withdrawn by June 2010, the police were still seen to be under such pressure in September 2012. In a discussion observed between two officers in the Bridewell study, for example, a police investigator asked a front-line officer how his policing priorities had changed now that he was no longer under pressure to increase the number of detections. The officer replied:

"You must be joking. That's the biggest load of rubbish I have ever heard. I had a meeting with my Chief Inspector and all he was banging on about was detections, detections, detections." <sup>42</sup>

From recent comments made by government ministers to senior police officers, it is evident that the OBTJ target is not just a local problem in these three police force areas. On the contrary, it seems that other police forces have adopted a local performance target to encourage the police to increase the number of detections. Accordingly, at the Association of Chief Police Officer's annual conference (in September 2013) the Minister for Policing and Justice urged the police to use more judgment and discretion when dealing with low-level crime. He also reminded senior officers that it might be appropriate to simply give someone a "telling off" when called to a relatively minor incident.<sup>43</sup> In a similar vein, at the Superintendents' Association's Annual Conference (also in September 2013) the Home Secretary chastised senior officers for having

"brought back 'mechanical processes for assessing performance' in the hope that they could 'simply tick boxes' in order to prove that [they were] doing the right thing".<sup>44</sup>

There are not only resource implications for the police when pursuing such a strategy but, as noted above, it can lead to people being criminalised unnecessarily.

## **Performance targets and police cautioning practices**

The main criminal sanction for suspects arrested and detained by the police in the four stations observed was a police caution - accounting for 85 per cent of out-of-court disposals imposed in police custody.<sup>45</sup> The recording of a police caution is intended as an alternative to prosecution and, as such, it contains many of the characteristics of a conviction. This includes cautions being recorded on the Police National Computer and the person is more likely to be prosecuted if he or she commits a subsequent offence. A caution can also be cited in a CRB (criminal records bureau) check, which can have consequences for an individual's employment prospects. In addition, if cautioned for a sexual offence, the offender's details can be noted on the sex offenders' register. Accordingly, there are legal criteria which have to be met before a caution can be imposed. These include: (i) the need for a clear and reliable admission; (ii) that there is sufficient evidence to provide a realistic prospect of conviction; and, if so, (iii) it has to be considered in the public interest to impose a caution as an alternative to prosecution.<sup>46</sup> With the police under pressure from the OBTJ target, there were concerns raised by custody sergeants over cautions being imposed in cases where the legal criteria had not been met. When considering the "net-widening" effect of the target above, for example, it was mainly in relation to minor and trivial offences that custody sergeants



complained cautions were imposed when it was not in the public interest to do so. In this section it is the criterion of having sufficient evidence to gain a realistic possibility of conviction which is examined.

A controversial question put to custody sergeants in the research interview was whether the police would sometimes impose a caution in cases where there was insufficient evidence to prosecute. This was controversial because most custody sergeants knew that having sufficient evidence to prosecute was a legal requirement, and also because they were often responsible for deciding whether a suspect should be cautioned.<sup>47</sup> It is unlikely, therefore, that all custody sergeants would have been candid in their response but, even so, there were 20 respondents, 5 in each police station, who said this was the case. When accepting that cautions were sometimes imposed inappropriately, a few respondents acknowledged the detrimental effect that this could have on individuals. As one custody sergeant put it:

"A caution can impact on someone's career. When the police come to me for a caution but the evidence isn't there, I turn them away and won't let them proceed". However, this custody sergeant was later to comment on the utility of imposing cautions when dealing with a high volume of cases. At the start of the day, for example, he said, "If we have 30 people in the cells in the morning then a caution can be a quick way of turning them out"(A:ES).

There were concerns raised by custody sergeants about police officers issuing cautions without being aware of the cautioning criteria. This was the comment from one custody sergeant:

"I know some people will caution without any evidence but I'm absolutely against that. Officers seem to think that if there isn't a complaint and they can't go to court then they can deal with it by way of caution. They don't seem to realise that it's the same test whether it's a caution or a prosecution."(B:IH)

Another custody sergeant, having commented that cautions were not recorded inappropriately, later on in the research interview said: "The police will use cautions when there's not enough evidence to take it to court, as a way of getting detections" (A:UT).<sup>48</sup>

It was in relation to domestic violence cases that custody sergeants said cautions were most often used without meeting the legal criteria. When asked about cautioning practices, for example, this was the response of one custody sergeant:

"We are cautioning people inappropriately, particularly for domestic incidents because we have to show that we're taking positive action. That's rightly so, but sometimes I think we shouldn't be cautioning them because we can't offer any evidence if it went to court, because there isn't any"(C:PI).

Similarly, when a custody sergeant in another police station was asked whether cautions were sometimes imposed because there was insufficient evidence to prosecute he replied:

"Yes, but we are wrong ... Sometimes, particularly for violent offences and domestics, we would go for a caution even when it would not meet the CPS requirements. The police need to be seen to take positive action rather than accept that the evidence isn't there. If they admit it but we haven't got a statement [from the complainant] then it isn't going to court and so we shouldn't caution. But we have pressure from senior ranks who want us to caution."(B:SC)

While the CPS can consider a charging decision in domestic violence cases where a complainant refuses to make a statement to the police, comments from custody sergeants suggests that this was unlikely to be the case.<sup>49</sup> Accordingly, the view taken by these custody sergeants was that if there was insufficient evidence for the CPS to consider a charging decision, then it was inappropriate for the police to impose a caution instead.

With concerns raised over police cautioning practices nationally, particularly with cautions being imposed for serious offences, a review was undertaken by the police. Subsequently, the Ministry of Justice announced that the police will no longer be able to caution offenders in relation to indictable only offences.<sup>50</sup> The police are also restricted from imposing a caution in cases involving possession of an offensive weapon (including a knife), supplying Class A drugs and a range of sexual offences against children.<sup>51</sup> While this change means that people suspected of committing a serious offence can only be dealt with at court, in serious cases where there is insufficient evidence to prosecute, an alternative can be for the police to impose a caution for a less serious type of offence. The review, therefore, has not had the desired effect of increasing legal protections for suspects diverted from court and cautioned by the police. However, the Ministry of Justice has recently announced a new consultation on "out-of-court" disposals, to include the police use of cautions.<sup>52</sup> This review could usefully take into account proposals for reforming police cautioning procedure, including the adoption of an oversight mechanism which would allow cautioning decisions to be reviewed.<sup>53</sup>

## **Police performance targets and crime recording practices**

It has been noted above that the introduction of performance targets in public services encouraged "gaming" techniques, which include "managing" the data in order to achieve the set targets. There were concerns raised by custody sergeants in all four stations over the OBTJ target encouraging the police to "game" the official crime figures. It was generally the more experienced custody sergeants who were commenting on such practices. As one custody sergeant put it: "If I'm honest, I don't think the police are being truthful in their crime recording statistics. The problem is that they massively massage the figures" (B:QT). In a similar vein, a respondent in another police station said: "I will say this only quietly, but I would question that they are fiddling the figures" (C:QT).

In this study of police custody, it was difficult to try and gain an understanding of the various ways in which the police could manipulate the official crime statistics, particularly as it could involve a chain of decisions made by officers in different departments. Similar practices have been noted elsewhere, however. When commenting on the OBTJ target in the press, for example, a former senior police detective is reported as saying that police forces were

"using a series of tricks to manipulate crime figures to give a false picture of their performance ... The techniques — dubbed 'gaming' — are used to create the illusion that fewer crimes are being committed and that a bigger proportion are being solved".<sup>54</sup>

One way of "creating" offences, which was commented on by custody sergeants in all four stations, was for the police to arrest people for minor "Section 5" offences of disorder,<sup>55</sup> instead of for being "drunk and disorderly". This was because the former offence counts as a "detectable" offence whereas the latter does not. The two following comments from custody sergeants are illustrative of such practices:

"One thing I've noticed is that we seem to be arresting a lot of offenders for Section 5 offences now. In the past they would have been brought in for being drunk and disorderly ['D and D']. It's the cynic in me but I think this is because a Section 5 is a sanction detection and 'D and D' isn't. It isn't right to say that we aren't led by the figures because we are."(B:PI)

"The CPS charging standards make a clear distinction between a Section 5 offence and a 'D and D'. It basically means that if you are drunk and do something naughty then it is a 'D and D' offence but if you are sober and behave in the same way then it's a Section 5. We are getting many more Section 5's now because it's good for the crime figures — it's so wrong."(D:JL)

Another way for the police to "create" offences, according to custody sergeants, was for the police to take formal action in cases which would more appropriately be dealt with as a civil dispute rather than a criminal offence. Examples given by custody sergeants included disagreements between landlords and tenants, as well as over consumer issues. The following two comments relate to disputes over car repairs, which custody sergeants felt had been brought inappropriately into the criminal justice system:

"There was one case where the owner wasn't happy with the repairs to his car and so he complained to the police. The mechanic who repaired the car was arrested for fraud and deception. It went through to the CPS for that! I'm not joking, there was a prosecutor looking into whether someone who hadn't repaired a car properly should be charged with obtaining money by deception."(A:ES)

"We've had people calling in saying that the garage won't give them their car back because they won't pay the bill and it's recorded as theft of a car. We feel that garages and shops use us as a debt recovery agency. The problem is the police are keen to arrest people and do everything they can to get a detection."(D:JL)

Such practices have been referred to as "mesh-thinning", which extends the "net-widening" metaphor in order to illustrate how the nets of social control can be more closely woven, leading to fewer cases escaping formal action once reported to the police. There were similar issues noted by Young in his examination of the effect of the OBTJ target on street policing.<sup>56</sup> In particular, he observed a significant increase in the police use of penalty notices for disorder for behaviour which would previously have been dealt with informally by the police.

At the time of these research interviews with custody sergeants, it was noted above how the withdrawal of the OBTJ target had not filtered through to decisions made on the ground. However, in the Bridewell study, just a few months later, the new performance target was seen to influence changes in police behaviour and decision-making.

### ***The Bridewell Legal Advice Study: update***

When returning to Police Station B in February 2011 changes were noted in police crime recording practices. Instead of the police being encouraged to "create" offences by pursuing a s.5 offence, for instance, custody sergeants said they were now dealing with more "drunk and disorderly" offences. As one custody sergeant put it, "We get a lot more 'D and D's' now instead of the cops turning them into Section 5's" (B2:UV).<sup>57</sup> With "drunk and disorderly" offences not being counted as a recorded crime, this strategy helps to hide a lot of low-level

offences which were previously included. At the same time, however, it seemed that the police continued to be under pressure to increase the number of detections, particularly when dealing with more serious offences.

There were cases involving serious offences observed where the police wanted to conduct further investigations and, in the meantime, bail the suspect to return to the station at a later date. At the time of bailing the suspect it was the practice of custody sergeants to obtain a "crime number" which recorded the incident as a "crime" in the official statistics. On occasions, arguments were seen to arise between the investigating officer and the custody sergeant over whether a "crime number" should be obtained, particularly in cases where the police were not confident that the offence would be detected. In one case observed, for example, a suspect had been arrested and detained over an allegation of rape. The police wanted to conduct further investigations before deciding whether they had sufficient evidence to send the case on to the CPS for a charging decision to be made. The custody sergeant was asked to bail the suspect without a crime number and while refusing to accept this request initially, it was subsequently granted following the intervention of a senior police officer.<sup>58</sup>

The reason why custody sergeants were reluctant to bail suspects without a crime number was commented on in the research interviews. When referring to a similar situation, for example, one custody sergeant said:

"I had a case this morning where I wanted a crime number for an assault. The victim was covered in blood with a head injury but he couldn't make a statement because he needed an interpreter. A man was arrested at the scene and brought into custody. The police wanted to bail him because they needed a statement from the victim. I asked for a crime number and the cop said he couldn't be sure that the victim had been assaulted. I told him that they had a guy in custody for eight hours suspected of having committed the assault. If they were now saying they weren't sure that the victim had been assaulted then this could make the arrest and detention unlawful."(B2:VU)

Another custody sergeant commented on the pressure senior officers were under from the media to improve the detection rate in relation to certain types of offences, which meant they were keen to delay allocating a crime number in some cases. By way of an explanation, he said:

"We get this a lot, particularly when they're dealing with a burglary or assaults because they want to be seen to reduce these types of crimes. It's as if we are going back to the bad old days when we were fiddling the figures. Well, we are massaging them to the extent that we won't 'crime' a burglary or an assault unless they are detected. That means the figures show there are fewer burglaries and assaults and that's good for PR [public relations]." (B2:SC)

While some custody sergeants were initially prepared to challenge the pressure coming from investigating officers to delay the allocation of a crime number, they later accepted such requests following interventions made by senior officers.

The official criminal statistics, as reported by the 43 different police force areas, can be seen to provide a "league table" of police performance. With a national target to reduce crime all police forces reported a decrease in crime in the year ending March 2013, when compared to the previous year. With an average reduction of 7 per cent identified throughout England and Wales, the falls in crime reported by police force areas varied from between three to 16 per

cent.<sup>59</sup> After having taken over responsibility from the Home Office for compiling the official criminal statistics, the Office for National Statistics (ONS) has been sceptical about the reductions in crime reported by some police force areas. In particular, the ONS stated that, "bigger falls in police-recorded crimes may be due to pressures to meet targets on crime reduction and detections".<sup>60</sup>

As noted above, while the National Crime Recording Standard was to help improve consistency in crime recording practices, there are limits as to how far police discretion can be constrained. In addition, with the British Crime Survey (BCS), a household survey, now providing a measure of crime as reported by victims, police recorded crime figures are not the only source for criminal statistics. While measuring crime in a different way, the BSC found that crimes against households and resident adults in 2013 were reported to be down 7 per cent when compared to the previous year's survey.

On their own, therefore, as Maguire notes, the counting of offences officially recorded by the police is just one of a number of ways of exploring the nature and scale of crime. However, he continues, saying:

"This is not to deny the continuing importance of the traditional recorded crime figures, especially at the level of symbolic politics: on the contrary, the salience of crime in current political and media discourses ensures that even a small percentage rise in one category of recorded offences can set off tabloid headlines and heated political debates."<sup>61</sup>

Within a performance culture, therefore, it is important that the official criminal statistics are compiled in such a way as to reflect the complex and contradictory nature of crime.

### **Performance targets and a "command and control" style of management**

From comments made by custody sergeants in this study, it was evident that performance management was having a dominant effect on policing strategies and decisions made in police custody. This section explores some of the concerns raised by custody sergeants over performance targets causing senior officers to become more influential in what were considered to be their custody decisions.<sup>62</sup> With the withdrawal of the national OBTJ target, for example, when asked if the police were still under pressure to increase the number of detections, one custody sergeant replied:

"Yes, ridiculously so. Officially it's all gone, but we are in a so-called disciplined organisation with different hierarchies of ranks. With each rank being accountable to the one above, they all want to look good to their direct boss, and the number of arrests and detections are what they are measured on."(B:LJ)

When considering police cautioning practices above, some custody sergeants were seen to comment on the pressure coming from senior officers to improve the detection rate. This was made explicit by one custody sergeant who said:

"I won't caution someone without having the evidence, but I know there is a push from above to do so. It comes down to performance targets and the need to get detections. If you haven't got a complaint from a victim, you won't get a conviction at court, but with an admission in the interview they will give them a caution. While it is not right ethically, it is good for the figures."(B:IX)

While a number of respondents commented on senior officers intervening inappropriately in their decisions, it was generally the more experienced custody sergeants who said they would sometimes challenge such interventions. The following comments help to illustrate some of the ways in which custody sergeants tried to maintain their independence:

"There's a lot of pressure from the top and not all custody sergeants will stand up to them. It doesn't bother me because I will point out that the law states where it is my decision. A senior officer can take on the role of the custody sergeant but if they try to overrule me I'll hand them the keys [to the cells] and tell them to get on with it."(A:ES)

"The cops are under pressure to increase detections but I'm not. I don't give two hoots because I'm not measured on detections. We get pressure from the senior ranks though. I'll tell the inspectors that I'm here for the guy's welfare and not to detect their crimes."(B:QT)

"We can get pressure from the higher ranks saying you must do this or that. I'll refer them to the letter of the law. In relation to bail, for instance, I will remand someone but only if I'm given grounds. I won't do it without."(C:BQ)

When working in a hierarchical organisation it can be extremely difficult for custody sergeants to challenge decisions required to be made by higher ranking officers. As noted above, while any resistance was seen to come from the more experienced custody sergeants, it is of concern that most said they were due to retire soon from the police force.<sup>63</sup> For other custody sergeants, particularly those with a number of years to serve in the police, there were concerns raised that if they challenged senior officers' decisions this could cause difficulties if they were later redeployed under their supervision. While issues of bullying and intimidation by senior officers were discussed informally by some custody sergeants, this was not an issue they were prepared to comment on in the research interviews.

In Police Station B, in late 2010, there was a dispute arising between custody sergeants and police investigators over what conditions should be attached to a suspects' bail. With custody sergeants being legally responsible for deciding what bail conditions should be attached, some said they would refuse to impose conditions as required by investigating officers if considered to be inappropriate.<sup>64</sup> The following two comments from custody sergeants help to illustrate some of the issues raised:

"You can get an officer wanting pre-charge bail conditions and they are told they can't have them because they haven't reached the threshold test.<sup>65</sup> They don't understand what this means and say that their boss wants them to put on conditions. I'll tell them that their boss is wrong, but that just builds up a conflict with the cops, which I can do without"(B:UV).

"We are having a lot of arguments at the moment about bail conditions. We know what's suitable. A curfew on night-time burglars is a good thing but they [the detectives] come up with 'Mickey Mouse' suggestions. They want to put a condition on some suspects not to come into the city centre at all. You also get them wanting to impose a night-time curfew on someone who hasn't done anything wrong at night"(B:FX).

When returning to Police Station B, as part of the Bridewell study in February 2011, custody sergeants said that they had 'lost the battle' over pre-charge bail conditions. As they explained, this was because the dispute about who was to decide on what conditions to bail should be imposed was considered by supervising officers. With senior officers having

responsibility for police investigations outranking those responsible for police custody, it was determined that investigating officers would choose which conditions to attach to bail. Custody sergeants complained that this meant they sometimes had to impose bail conditions which they felt were inappropriate. With legal advisers having been excluded from the custody suite in this station, legal challenges to such inappropriate bail conditions were having to be made at court.<sup>66</sup>

While custody sergeants generally acknowledged the potential conflict arising out of performance management, due to the influence of senior officers, there were others, particularly those who were relatively new to custody, who seemed to be unaware of such tensions. Indeed, one custody sergeant, recently recruited into police custody, was seen to have a positive attitude towards performance targets when he said:

"Police officers are always going to be measured by what they do — how many arrests and detections. What else can they be measured by? You can't measure the job they do on the street but you can look at their record for arrests and detections. It's good for the cops. When I was a cop I liked arresting people and you knew you'd got it right because it tended to be the same ones who kept getting picked up."(C:IQ)

It seems from this comment that the custody sergeant's view of performance targets was informed more by his former role as a patrol sergeant than it was in his role as an "independent" custody sergeant. When custody sergeants were asked in the research interviews about what training was provided, all confirmed that they received basic training on PACE. Some commented that this did not place a sufficient emphasis on the legal rights of those detained. As one custody sergeant put it:

"We don't get any training on legal advice. We just read their rights off the screen. We are given no information about the importance of legal advice"(A:ES).

Training for custody sergeants has been found to vary across police force areas. For example, a former custody sergeant described such training as a "postcode lottery", with some forces providing excellent in-house training, while others do not.<sup>67</sup>

## **Discussion**

An unexpected finding arising out of this study of legal advice in four large police stations was the priority given to performance management, which was to have implications for decisions made in police custody. The "offences brought to justice" target, for example, was seen to encourage "net-widening", with the police arresting and detaining suspects for minor and low-level offences which previously would not have led to formal police action. While the OBTJ target had been withdrawn in June 2010, there continued to be sub-layers of targets (to increase the number of arrests and detections, for example) lying beneath the overarching priority to "cut crime".

This study has made it known that cautions are the main out-of-court disposal imposed by the police in custody, even though this disposal is intended to be used as an alternative to prosecution. With pressure on the police to increase the number of detections, there were noted to be serious consequences for suspects as cautions were being imposed in cases where the legal criteria had not been met. This was just one effect of "gaming" within performance management. Police crime recording practices were said by custody sergeants to be another

way in which the official statistics could be "gamed" in order to achieve the desired effect within a performance culture. While ministers try to encourage senior police officers to loosen their grip on performance targets, at the next general election the police are only too well aware that the reductions in crime will be used to show the effectiveness not only of government but also of the new Police and Crime Commissioners.<sup>68</sup>

It is the "command and control" style of management, required under performance measurement, which was seen to be most threatening to the PACE regulatory framework. In particular, PACE established new standards, with the new role of the "independent" custody officer intended to provide a clear separation between their responsibilities in custody from other policing roles and from the investigation.<sup>69</sup> However, with the "top-down" approach required when prioritising police performance, this was seen to encourage senior officers to intervene in decisions made in police custody. Within the police as a hierarchical organisation, such intervention meant that the independent status of custody officers could be undermined as it was the decisions of senior officers which were to take precedence.

While most custody sergeants said that it was unacceptable for senior officers to try and influence *their* custody decisions, they were effectively seen to be powerless to challenge higher-ranking officers. Instead, and in order to protect themselves from legal action arising out of "bad" and even unlawful decisions which senior officers might require, all custody sergeants could do was note on the custody record details of the officer who had required the decision to be made. While this might provide some protection for custody sergeants, their impotence undermines important legal safeguards for those held in police custody. Nevertheless, by noting the name of the officer making the decision, this action does suggest that there are accountability mechanisms, such as the threat of legal action, which could be strengthened in order to uphold suspects' legal rights. The findings also highlight the need for improvements in training for custody sergeants, particularly in relation to PACE legal protections.

An important legal safeguard provided by PACE is having access to free and independent legal advice. Interestingly, not one custody sergeant commented on legal advice as helping to promote suspects' legal protections. It is evident that the involvement of a legal adviser can help to ensure that the legal rights of their clients are upheld; including refusing to accept a caution if the legal criteria have not been met. However, while around 45 per cent of suspects in custody request a solicitor, just one-third actually receive legal advice.<sup>70</sup> In addition, in the past legal advisers had waited around in police custody for their client to be dealt with, their presence providing an important "check and balance" on police powers. Over recent years, however, it seems that legal advisers have become increasingly marginalised from the pre-charge process.<sup>71</sup> Accordingly, the problem with the PACE framework, as noted by Cape and Young, is that it "relies very heavily on the police regulating themselves, a reliance that has become more pronounced over time".<sup>72</sup>

Another key issue arising out of this study concerns the resource implications for the police in supporting a performance culture which encourages suspects to be arrested and detained for minor and low-level offences. In times of austerity, it seems absurd that the police are continuing to support a strategy which encourages officers to concentrate their efforts on "easy" arrests and detections. While such a strategy enables the police to manage performance within "league tables" of recorded crime figures, which encourages competition between police forces, it also means that valuable resources are taken up unnecessarily in police custody.



This article has only been able to scratch the surface of the relationship between performance management and PACE safeguards in custody. Nevertheless, it has helped to highlight examples of perverse incentives, behaviours and gaming associated with performance measurement, which have the potential to undermine the independence of custody officers and the legal protections for suspects detained by the police. It also raises questions about the extent to which accountability mechanisms, such as the threat of legal action against the police, and access to free and independent legal advice, could be strengthened in order to help safeguard the legal rights of those detained.

**Dr Vicky Kemp**

*Principal Research Fellow, University of Nottingham*

Crim. L.R. 2014, 4, 278-297

---

\*Formerly a Principal Researcher at the Legal Services Research Centre. The opinions expressed in this article are the author's own and do not represent the views of the Legal Aid Agency or the Ministry of Justice.

1. PACE has become increasingly complex, with revisions significantly increasing the number of Codes of Practice involved, as well as the number of pages included in the Codes. The Statutory Charging Initiative has also led to the Crown Prosecution Service gaining power to charge suspects. See further, *E. Cape and R. Young (eds) Regulating Policing (Oxford; Hart Publishing, 2008)*.

2. *J. Jackson, "Police and Prosecutors after PACE: The Road from Case Construction to Case Disposal" in Cape and Young (eds), Regulating Policing (2008)*.

3. For details of delays providing a potential barrier to legal advice see V. Kemp, "No Time for a Solicitor: Implications for Delays on the Take-up of Legal Advice" [2013] Crim. L.R. 184.

4. In 2000–2001, for example, while 5.17 million crimes were recorded, only one in five resulted in an offender being detected (*Crown Prosecution Service, Narrowing the Justice Gap (London: CPS, 2002)*).

5. An offence was "brought to justice" when an offender received a criminal sanction. In addition to a summons, charge or having offences taken into consideration at court, out-of-court disposals included a fixed penalty notice, penalty notices for disorder, cannabis warnings and cautions (*R. Morgan, Summary Justice Fast — But Fair? (London; Centre for Crime and Justice Studies, 2008)*).

6. The police had been required to bring 1.25 million offences to justice by 2007–2008. By March 2008 there had been 1,477 million detected offences (*Home Affairs Select Committee, Seventh Report (2008)*), available at:

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/364/36406.htm> [Accessed January 22, 2014].

7. *N. Padfield, R. Morgan and M. Maguire, "Out of Court, Out of Sight: Criminal Sanctions and Non-judicial Decision-Making" in M. Maguire, R. Morgan and R. Reiner (eds) The Oxford Handbook of Criminology, 5th edn (Oxford; Oxford University Press, 2012)* and *R. Young, "Street Policing after PACE: The Drift to Summary Justice" in Cape and Young (eds) Regulating policing (2008), p.174*.

8. For a discussion of "net-widening" see *S. Cohen, Visions of Social Control (Cambridge; Policy Press, 1985)*.

9. *Office for Criminal Justice Reform, Initial Findings from a Review of the Use of Out-of-Court Disposals (2010)*, available at:

<http://www.justice.gov.uk/downloads/publications/moj/2011/out-of-court-disposals-june2011.pdf> [Accessed January 22, 2014].

10. There have been observed to be similar shifts in the number of offenders dealt with out-of-court. Based on the outcome of all arrests in 1981, for example, court disposals accounted for around three-quarters of all cases. By 1993 this figure had reduced to around half, and 42% by 1997 (Young, *"Street Policing after PACE: The Drift to Summary Justice"* in Cape and Young (eds), *Regulating Policing (2008)* p.165).

11. C. Greenwood, *"Theresa May axes police performance targets"* *The Independent*, June 29, 2010.

12. Compared with the 12 months to March 2010, for example, there was a 13.3% fall in the use of out-of-court disposals and a 3% fall in the number of defendants proceeded against at court (Padfield et al., *"Out of Court, Out of Sight: Criminal Sanctions and Non-Judicial Decision-Making"* in Maguire, Morgan and Reiner (eds), *The Oxford Handbook of Criminology (2012)*, pp.961–962).

13. Bevan and Hood, *"What's Measured is What Matters: Targets and Gaming in the English Public Healthcare System"* (1996) 84(3) *Public Administration* 517.

14. In relation to hospital waiting list targets, for example, "gaming" included leaving patients waiting in ambulances outside until the hospital was confident that they could be seen within the four hour target (B. Loveday, *"Policing Performance: The Impact of Performance Measures and Targets on Police Forces in England and Wales"* (2006) 8(4) *International Journal of Police Science and Management* 288).

15. There have been examples of police officers focusing on "easy" arrests, reclassifying or misreporting crime, and also unethical behaviour designed to achieve detection targets (S. Guilfoyle, *"On Target? — Public Sector Performance Management: Recurrent Themes, Consequences and Questions"* (2012) 6(3) *Policing* 5).

16. M. Maguire, *"Criminal Statistics and the Construction of Crime"* in M. Maguire et al., (eds) *The Oxford Handbook of Criminology (2012)*, p.214.

17. See further J. Berry, *"Reducing Bureaucracy in Policing"* (2010), available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117162/reduce-bureaucracy-police.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117162/reduce-bureaucracy-police.pdf) [Accessed January 22, 2014].

18. B. Loveday, *"Performance Management and the Decline of Leadership Within Public Services in the United Kingdom"* (2008) 2 *Policing* 122.

19. J. Seddon, *Systems Thinking in the Public Sector* (Axxminster: Triarchy Press, 2008).

20. M. Chatterton, *Making the Case: Views from Police Officers on the Ground*, unpublished report.

21. Loveday, *"Policing Performance: The Impact of Performance Measures and Targets on Police Forces in England and Wales"* (2006) 8(4) *International Journal of Police Science and Management* 288.

22. Section 36 of PACE provides that one or more custody officers shall be appointed for each custody suite, at least of the rank of a sergeant. Decisions required to be made by custody officers include authorising the detention of suspects, deciding if a suspect should be remanded or bailed and, if the latter, whether any conditions should be attached to their bail. The case disposal is also a decision often made by custody officers in cases which are not referred on to the CPS.

23. For further details of the police stations and methods involved see the earlier article: Kemp, *"No Time for a Solicitor: Implications for Delays on the Take-up of Legal Advice"* [2013] *Crim. L.R.* 184, 186.

24. The police station involved has not been named and instead the colloquial term the "Bridewell" has been used.
25. The fieldwork for this study was completed in December 2010 and the new arrangements came into operation in February 2011.
26. The initiative involved duty solicitors being based full-time in the police station during weekdays, from 9.00 to 17.00. There were two phases reviewed, each operational over a three-month period of time: the first from February to May 2011 and the second phase from July to October 2012.
27. For details of the methods involved see *V. Kemp, Bridewell Legal Advice Study: Interim Report (2012)*, p.20, available at: <http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2012/blast-report.pdf> [Accessed January 22, 2014] and *V. Kemp, Bridewell Legal Advice Study: Final Report (2013)*, pp.14–16, available at: <http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/blast-II-report.pdf> [Accessed January 22, 2014].
28. The first letter identifies the police station involved and the next two letters are the initials of the respondent, coded for reasons of confidentiality. In addition, while 48 out of the 50 custody sergeants interviewed were male, comments are referred to in the masculine even though references might also relate to two female participants.
29. Harriet Sergeant had similar findings in her study of policing. She provides a number of examples where the police were said to respond formally to minor and trivial matters, including people being arrested for holding a lift door open, for chalking on a pavement, and for urinating behind a bush (*H. Sergeant, The Public and the Police (London; Civitas, 2008)*).
30. A local OBTJ target was not included in Area D's policing plan for 2010–2011 and instead the priority target was to improve victim satisfaction in the criminal process.
31. See *Home Affairs Select Committee, Seventh Report (2008)*, available at: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/364/36406.htm> [Accessed January 22, 2014].
32. *R. Flanagan, The Review of Policing: Final Report (2008)*, p.57, available at: [http://webarchive.nationalarchives.gov.uk/20080910134927/http://police.homeoffice.gov.uk/publications/police-reform/Review\\_of\\_policing\\_final\\_report/flanagan-final-report?view=Binary](http://webarchive.nationalarchives.gov.uk/20080910134927/http://police.homeoffice.gov.uk/publications/police-reform/Review_of_policing_final_report/flanagan-final-report?view=Binary) [Accessed January 22, 2014].
33. Loveday, "Performance Management and the Decline of Leadership Within Public Services in the United Kingdom" (2008) 2 Policing 122.
34. Young, "Street Policing after PACE: The Drift to Summary Justice" (2008) Regulating Policing 184.
35. The changes were introduced under the 2005 Serious Organised Crime and Police Act. See further J. Spencer, "Extending the Police State" (2005) 1 New Law Journal 477.
36. *Kemp, The Bridewell Legal Advice Study: Interim Report (2012)*.
37. There had been a 16% reduction in the number of suspects detained during July to October 2012, when compared with the same three-month period in 2011. Custody sergeants said there were two main reasons for this change. The first was because neighbourhood officers had been trained in restorative justice practices, which meant that more incidents could be resolved in the community. The second reason was due to custody sergeants being required to be more challenging of the police when bringing suspects into custody (see further *Kemp, The Bridewell Legal Advice Study: Final Report (2013)*, p.35).
38. The police investigators were part of the "police review team" which comprised office-based police officers who would take over the investigation of cases from other police officers so that they could return to front-line duties. There were seven investigating officers interviewed as part of the Bridewell study.

39. Kemp, *The Bridewell Legal Advice Study: Final Report* (2013), pp.36 and 40.
40. S. Choongh, *Policing as Social Discipline* (Oxford; Oxford University Press, 1997).
41. Processing cases included gathering evidence and conducting a police interview.
42. This conversation was observed on September 10, 2012 (Kemp, *The Bridewell Legal Advice Study: Final Report* (2012), p.40).
43. M. Evans "Police can give some criminals a ticking off, says minister" *The Telegraph*, September 23, 2013.
44. G. Rayner and M. Evans, "Home Secretary tells senior police officers public will not trust them if they are 'lacking in integrity'" *The Telegraph*, September 17, 2013.
45. From the custody records drawn from these four police stations over a two month period in 2009, of the 2,229 suspects receiving an out-of-court disposal, 85% were cautioned (or the equivalent for juveniles).
46. Ministry of Justice, *Simple Cautions for Adult Offenders* (London; Ministry of Justice, 2013).
47. The police are required to refer serious and more complex cases on to the CPS for a decision (Crown Prosecution Service, *The Director's Guidance on Charging*, 4th edn (2011), available at: [http://www.cps.gov.uk/publications/docs/dpp\\_guidance\\_4.pdf](http://www.cps.gov.uk/publications/docs/dpp_guidance_4.pdf) [Accessed January 22, 2014]).
48. See also Kemp, *The Bridewell Legal Advice Study: Final Report* (2013), pp.27–30, where such practices were seen to arise.
49. CPS, *Prosecution Policy and Guidance: Domestic Violence (including aide-memoire)*, available at: [http://www.cps.gov.uk/legal/d\\_to\\_g/domestic\\_violence\\_aide-memoire/](http://www.cps.gov.uk/legal/d_to_g/domestic_violence_aide-memoire/) [Accessed January 22, 2014].
50. These are the most serious type of offences, including rape, manslaughter and robbery, which must be tried in the Crown Court.
51. Ministry of Justice, "Chris Grayling: Simple Cautions for Serious Offences to be Scrapped" Press release, September 30, 2013).
52. Ministry of Justice, "Clampdown on Cautions for Repeat Offenders" Press release, November 14, 2013.
53. See further P. Hynes and M. Elkins, "Suggestions for Reform to the Police Cautioning Procedure" [2013] Crim. L.R. 966.
54. D. Barrett, "Police force tricks to 'fiddle' crime figures" *The Telegraph*, December 5, 2009.
55. This is an offence of disorder under s.5 of the Public Order Act 1986.
56. Young, "Street Policing after PACE: The Drift to Summary Justice" in Cape and Young (eds) *Regulating Policing* (2008), p.176.
57. The number "2" is added to this code to indicate that the interview was with custody sergeants in Police Station B as part of the Bridewell study.
58. It was a police superintendent who intervened. Details of this incident were recorded as a fieldwork note on May 9, 2011.
59. Office for National Statistics, *Crime Statistics: Latest Edition (year ending March 2013)* (2013), available at: <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/index.html> [Accessed January 22, 2014].
60. See "Fall in crime in England and Wales may be exaggerated" *BBC*, January 24, 2013, available at: <http://www.bbc.co.uk/news/uk-21178847> [Accessed January 22, 2014].
61. Maguire, "Criminal Statistics and the Construction of Crime" in *The Oxford Handbook of Criminology* (2012), p.234.
62. As noted above, these included authorising the detention of suspects, deciding if a suspect should be remanded or bailed and, if the latter, whether any conditions should be attached to bail. Custody sergeants can also be responsible for cautioning decisions.

63. The experienced custody sergeants had spent around 30 years in service and so most were either due soon to retire or, due to budget cuts, they were facing compulsory redundancy under Regulation A19 of the Police Pensions Regulations 1987.

64. Section 27 of the Criminal Justice and Public Order Act, 1994 gives custody sergeants the power to attach conditions to police bail.

65. The police are required to establish that the "threshold test" has been passed when bailing suspects with pre-charge conditions. The "threshold test" requires the police to establish that there is sufficient information to suggest that the suspect committed the offence.

66. There are not only resource implications of bail conditions being challenged at court, but with investigating officers not being advised of successful applications, this means that inappropriate conditions continued to be imposed—see *Kemp, Bridewell Legal Advice Study: Interim Report (2012)*, p.48 and *Kemp, Bridewell Legal Advice Study: Final Report (2013)*, pp.41–44. For issues concerning the pre-charge bail conditions see also A. Hucklesby, "Police Bail and the Use of Conditions" (2001) 1 *Criminology and Criminal Justice* 441.

67. J. Coppen, "PACE: A View from the Custody Suite" in *Cape and Young (eds), Regulating Policing (2008)*, p.82.

68. Set up in November 2012, the Police and Crime Commissioners are likely to emphasise achievements under the crime reduction target as a headline measure of police performance.

69. B. Wilding, "A Review of the Impact of PACE" in *Cape and Young (eds) Regulating Policing (2008)*, pp.126–127.

70. P. Pleasence, V. Kemp and N.J. Balmer, "The Justice Lottery? Police Station Advice 25 years on from PACE" [2011] *Crim. L.R.* 3.

71. E. Cape, "Designing Out Defence Lawyers" in J. Robins (ed.), *No Defence: Lawyers and Miscarriages of Justice (London; Solicitors Journal, 2013)*. In addition, in two of the stations included in this study, legal advisers had effectively been barred from entering into the custody suites (Kemp, "No Time for a Solicitor: Implications for Delays on the Take-up of Legal Advice" [2013] *Crim. L.R.* 184, 195).

72. *Cape and Young (eds) Regulating Policing (2008)*, p.6.

© 2015 Sweet & Maxwell and its Contributors